# RECENT CASES

**Banks and Banking—Night Deposit—Relation of Bank and Depositor**—Plaintiffs, wishing to make a night deposit, placed money, a check, a deposit slip, and a pass-book in a canvas bag provided by defendant bank. The depository was unlocked and the bag inserted. Plaintiffs received no credit for the deposit. When it appeared that the bag had been lost before its contents had been removed, plaintiffs sued to recover the amount in the bag. Appeal from judgment for plaintiffs. *Held,* judgment affirmed. The relation between a bank and a night depositor is a bailment for mutual benefit at least until the funds are removed from the bag, and the bailee bank is required to use reasonable care in seeing that the depositor's account is credited. *Bernstein v. Northwestern National Bank,* 41 A. (2d) 440 (Pa. Super. 1945).

A novel problem in legal relationships such as is presented by the instant case seems most wisely solved by considering to what already-determined legal relation the facts are most analogous and by adopting the rights and duties to which that relation gives rise, unless there is some compelling reason for not so doing. Only in this way are decisions in novel cases protected against arbitrariness. The apparently basic question which the court did not offer to answer is, At what point when money is passed through a teller's window by a depositor does the relation of debtor and creditor come into existence?[1] While agreement is not complete, the general rule appears to be that delivery of the funds with a deposit slip into the possession of an officer of the bank is sufficient to pass title to the bank, creating the relation of debtor and creditor.[2] The term "night depository" is actually a misnomer, for the device may be used at all times. The delivery of funds through this device—the funds coming into the possession of the bank with the same intention as though they had been passed through the teller's window—seems to such an extent analogous to the latter transaction that similar legal rights and duties should follow. It is not logical to say that a person who, during banking hours, chooses to make use of the depository device stands in an entirely different relation to the bank than a person who enters and passes his money through a window. What the bank is actually doing is extending its hours of business for receiving

1. When should the relation of debtor-creditor arise? Only after an entry upon the books of the bank or in the depositor's pass-book? Or only after the money has been commingled with other funds of the bank? When a receipted deposit slip has been returned? After the money has been counted by the teller? Or as soon as it comes into the possession of the teller?

2. "The teller takes the money with the deposit slip. Then the deposit is complete." ZANE, THE LAW OF BANKS AND BANKING (1900) § 131. "The term 'deposit' when used in connection with a banking transaction, denotes a contractual relationship ensuing from the delivery, by one known as a 'depositor,' of moneys, funds, or things into the possession of the bank. . . ." 7 AM. JUR. (1937) § 405 and cases cited therein. "A deposit is complete when it passes from the possession of the depositor into the hands and into the possession of the agent of the bank. . . ." MAGEE, A TREATISE ON THE LAW OF NATIONAL AND STATE BANKS (3d ed. 1921) § 170. 1 MORSE, A TREATISE ON THE LAW OF BANKS AND BANKING (6th ed. 1928) § 179. But *cf.* Wasson v. Lamb, 120 Ind. 514, 22 N. E. 729 (1889) (debtor-creditor relation not established until deposit is entered in pass-book); Bassett v. City Bank and Trust Co., 115 Conn. 1, 160 Atl. 60 (1932) (deposit made when cash was handed to teller with deposit slip and placed with other funds; deposit need never be entered on the books of the bank); *In re* Ruskay, 5 F. (2d) 143 (1925) (relationship of debtor-creditor created though deposit was after business hours and not credited on the bank's books until the following day).

deposits by providing the depository chute and safe as it provides the window and the teller.[3] Any question of the presence of consent to accept the funds for deposit may be answered by saying that the bank in offering the service expressed by that "unequivocal act" such consent in advance.[4] Thus, intent to have title pass is identical in both situations. Certainly the bank has complete possession and the right to commingle the funds. It should not matter whether or not it exercises that right to commingle. The analogy of a deposit made through the teller's window to the facts of the instant case appears clear and should govern, deciding the rights and remedies here. The effect of the court's decision is to introduce the additional and unnecessary complication of the bailment relation into *every* deposit transaction, establishing, even in the case of manual delivery to the teller, a temporary bailment until some undetermined point in the process of commingling the money with other bank funds.[5] To lawyers such a decision might not be surprising. But it is well to guard against legal rules which tend to make the law appear to laymen as no more than a bag of tricks.

**Patents—Inventor's Right to Protection for Subcombination—** Plaintiff brought a suit in equity under R. S. § 4915 to compel issuance of a patent upon a subcombination of the elements of a machine for splitting, peeling, and coring pears. The Patent Office had allowed claims covering the machine as a whole but refused the petitioner's claims on the subcombination, namely, the whole machine minus the splitting knife. A patent on the subcombination was sought in order to prevent infringing of a portion of the invention which by itself was valuable. The Court of Appeals sustained the ruling of the Patent Office by holding, in effect, that the issuance of patents on a subcombination does not come within the Constitutional provision that the patent law must promote science and the useful arts.[1] In reversing this ruling the United States Supreme Court *held* (four justices dissenting),[2] that a subcombination may be patented despite the fact that the prospective patentee does not intend to exploit the subcombination as such, provided there is no purpose to enlarge the monopoly of either invention. *Special Equipment Co. v. Coe,* 65 Sup. Ct. 741, 89 L. Ed. (Adv. Ops.) 726 (1945).

The views expressed by the majority of the court in upholding an inventor's right to a monopoly of his invention, and the Court of Appeals in substantially advocating free use of inventions by the public, indicate the presence of two conflicting economic views regarding patents. The Con-

3. "The purpose . . . was to have the funds reach the teller by a mechanical conduit precisely the same as if the depositor walked into the bank and personally handed it to the teller." Brief for Appellees, p. 11, 41 A. (2d) 440 (Pa. Super. 1945).

4. "Some unequivocal act by the bank . . . was necessary to make it a general deposit and create the status of debtor and creditor. This relationship cannot result without the consent of both parties to the transaction." 41 A. (2d) 440, 441 (Pa. Super. 1945). Why is not the act of setting up the window and teller to receive deposits a sufficient "unequivocal act"? Furthermore, the bank receives funds upon an agreement which is "usually a tacit one and implied . . ." 7 AM. JUR. (1937) § 405.

5. Counsel for plaintiffs made the following sound argument: "Certainly the law cannot break up into segments a single, simple transaction of deposit and make the fragments depend upon the various stages of processing which the bank may see fit to go through." Brief for Appellees, p. 15, 41 A. (2d) 440 (Pa. Super. 1945).

1. Special Equipment Co. v. Coe, 144 F. (2d) 497 (1944).

2. Justices Douglas, Black, Murphy, and Rutledge dissenting.

stitution grants Congress the right to issue letters patent to promote science and the useful arts;[3] and if the public is ultimately to benefit there must be stimulations to induce new inventions.[4] This inducement is given by Congress through allowing the inventor exclusive rights to deal with his invention as he sees fit for a period of seventeen years.[5] If the wiles of would-be infringers are such that an inventor needs to patent a subcombination in order to protect himself against partial infringement upon the fruits of his labor, there should be no curtailment by "judicial legislation" unless, perhaps, the patentee seeks thereby to extend or enlarge upon the patent monopoly of the complete machine.[6] The view taken by the Court of Appeals would require the petitioner to show his intention was to stimulate commercial development of the invention and further to establish that his purpose is not to protect some other patent. But, since 1896, it has consistently been held that a patentee has no obligation to use his invention or grant the use of it to others.[7] The view expressed by the majority of the court, in the instant case, is manifestly proper and reassuring to those who feel that our patent system has contributed immeasurably to the industrial development of our country.

**Taxation—Basis—Sale of Stock Received in Non-Taxable Merger**—In 1939, plaintiff received shares in the Y corporation in exchange for shares in the X corporation pursuant to a non-taxable, statutory merger. At the time of the exchange, the transfer agent matched certificates so that by certificate numbers particular Y shares could be traced to particular X shares surrendered in the merger. The taxpayer had bought the X shares in five separate blocks at different times and prices. In 1940, he sold certain Y shares which were represented by three certificates he received on cancellation of three X certificates. Plaintiff used the cost of the three blocks of X stock as the basis in determining the gain or loss on the sale of the three corresponding blocks of Y stock. The Commissioner ruled this was not the proper basis and that plaintiff should use the cost of all his X shares averaged with all his Y shares as the basis. The Tax Court affirmed the Commissioner's ruling. On appeal, the Circuit Court of Appeals *held,* Tax Court reversed. The cost of the identified blocks of X shares (not cost of all X shares averaged with all Y shares) is the correct basis since identification of Y shares with specific X shares, whose cost is known, is possible. *Bloch v. Commissioner of Internal Revenue,* 148 F. (2d) 452 (C. C. A. 9th, 1945).

The section of the Internal Revenue Code applicable to the instant case declares that the basis for determining gain or loss shall be the same

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3. U. S. Const. Art. I, § 8.

4. See Meyers & Lewis, *The Patent "Franchise" and the Antitrust Laws* (1941) 30 Geo. L. J. 117, for a discussion of this problem.

5. Rev. Stat. § 4884 (1930), 35 U. S. C. A. § 40.

6. Ethyl Gasoline Corp. v. United States, 309 U. S. 436, 60 Sup. Ct. 618, 84 L. Ed. 852 (1940), limits the use of a patent monopoly from enlarging or extending the patent monopoly of another invention.

7. Continental Paper Bag Co. v. Eastern Paper Bag Co., 210 U. S. 405, 28 Sup. Ct. 748, 52 L. Ed. 1122 (1908); Chapman v. Wintroath, 252 U. S. 126, 40 Sup. Ct. 234, 64 L. Ed. 491 (1920); Crown v. Nye Tool Works, 261 U. S. 24, 43 Sup. Ct. 254, 67 L. Ed. 516 (1923); Woodbridge v. United States, 263 U. S. 50, 44 Sup. Ct. 45, 68 L. Ed. 159 (1923); Fox Film Corp. v. Doyal, 286 U. S. 123, 52 Sup. Ct. 546, 76 L. Ed. 1010 (1932); Hartford-Empire Co. v. United States, 323 U. S. 386, 65 Sup. Ct. 373, 89 L. Ed. (Adv. Ops.) 845 (1945).

for property received as for the property exchanged.[1] The question presented by the case, therefore, is, What has been exchanged for the particular stock sold? The taxpayer claimed that in 1939 there was an exchange wherein particular blocks of stock in the old X corporation were exchanged for particular blocks in the new Y corporation and that identification of the shares was possible by the matching of particular X and Y certificates. The Commissioner's view, which the court declined to accept, was that there was an exchange of all old shares for all new shares.[2] This would have been the usual reorganization procedure and apparently the plan of reorganization in the instant case did not call for matching of new stock with different blocks of the same class of old stock held by the same owner.[3] For a decade, cases have held the correct basis for determining gain or loss on stock acquired in a reorganization exchange to be the aggregate cost of the surrendered shares allocated equally to the new shares received.[4] While it was impossible in those cases to identify the stock sold with any particular portion of the old stock, the rationale of those cases indicates that identification is immaterial.[5] The *Arrott* case holds that the old shares all have the same exchange value and the old shares lose their identity when traded for the new.[6] The normal requirement for the issuance of stock in the new corporation is surrender of stock in the old corporation. Therefore, the cost of one new share is to be determined by dividing the number of new shares received into the aggregate cost of all the surrendered old shares.[7] The cost of a new share ascertained by this method will, when subtracted from the selling price of the share, produce the exact taxable gain in the transaction. This rule, which has been adopted

1. 53 STAT. 40 (1939) as amended, 26 U. S. C. A. § 113 (a) (6): "Basis (Unadjusted) of Property.—The basis of property shall be the cost of such property; except that—(6) Tax-free exchanges generally. If the property was acquired, after February 28, 1913, upon an exchange described in section 112 (b) to (e), inclusive, the basis (except as provided in paragraphs (15), (17), or (18) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. . . ."

2. "So far as the affairs of the absorbing corporation are concerned, it may be quite right to hold, if any such issue were before us, that all of the stock put together which is possessed by a stock holder of the absorbed corporation is surrendered for the proper amount of stock in the absorbing corporation." 148 F. (2d) 452, 456 (C. C. A. 9th, 1945). By deciding that the issue is not before it, the court thus avoided the pertinent question of the case, i. e. whether or not the exchange was particular certificate for particular certificate or all old shares for all new shares.

3. The reference in the stipulation of facts to the effect that the transfer agent issued certain new certificates in lieu of certain old certificates does not state this to be the plan of reorganization adopted. 148 F. (2d) 452, 454 (C. C. A. 9th, 1945).

4. Helvering v. Stifel, 75 F. (2d) 583 (C. C. A. 4th, 1935); Commissioner of Int. Rev. v. von Gunten, 76 F. (2d) 670 (C. C. A. 6th, 1935); Commissioner of Int. Rev. v. Oliver, 78 F. (2d) 561 (C. C. A. 3d, 1935); Commissioner of Int. Rev. v. Bolender, 82 F. (2d) 591 (C. C. A. 7th, 1936); Arrott v. Commissioner of Int. Rev., 136 F. (2d) 449 (C. C. A. 3d, 1943); Epstein v. Commissioner of Int. Rev., 36 B. T. A. 109 (1937); Runkle v. Commissioner of Int. Rev., 39 B. T. A. 458 (1939); Fleischmann v. Commissioner of Int. Rev., 40 B. T. A. 672 (1939).

5. Arrott v. Commissioner of Int. Rev., 136 F. (2d) 449 (C. C. A. 3d, 1943). "Each new share costs the taxpayer the quotient of the cost of the old shares divided by the number of new shares he receives. If this is correct, the question of identification drops out of the operative facts in determining the value of shares received in a tax free reorganization." *Id.* at 452.

6. "The old shares all have the same exchange value for the new ones no matter what they cost the taxpayer. He gets as much new stock for the share for which he paid $80 as he does for the share for which he paid $120. The old shares lose their identity when traded for the new. . . ." *Ibid.*

7. See the first sentence of note 5 *supra*.

by the Tax Court [8] and applied in this case by that court, is fair to the taxpayer [9] and to the Treasury.[10] The court in the instant case distinguishes four of the "average cost" basis cases on the ground noted above, that identification is impossible. It charges that the reasoning of the *Arrott* case is erroneous, but the very factor which the court considers error appears to be a sound argument against the instant decision.[11] The instant decision has changed the average cost rule in the Ninth Circuit.[12] In re-establishing uniformity, the Supreme Court or the Congress will find a sound rule in the *Arrott* case and others of the same view.

**Torts—Literary Property—Liability of Innocent Publisher of Plagiarized Material**—Plaintiff wrote a partly fictitious screen-play on the life of Clara Barton. Defendant Brown plagiarized parts of the plaintiff's play by incorporating some of the fictitious events and characters into an unpublished book. Co-defendant Hearst Magazines Inc. published extracts from defendant Brown's book in one of its magazines, entitling them "High-Lights from a Forthcoming Biography. The Biography of Clara Barton. By Beth Brown." This was done without knowledge of the plagiarism. In an action to enjoin further use, to have an accounting, and to recover damages, plaintiff was awarded a verdict against both defendants on all counts. On appeal, *held* (2-1 decision),[1] affirmed. A publisher printing extracts from an unpublished book, which was a plagiarism, even though the publication was innocent, is nevertheless liable for damages. *De Acosta v. Brown,* 146 F. (2d) 408, (C. C. A. 2d, 1944),[2] *cert. denied,* 13 U. S. L. WEEK 3449 (U. S. 1945).

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8. See the B. T. A. citations in note 4 *supra.* Big Wolf Corp. v. Commissioner of Int. Rev., 2 T. C. 751 (1943), while involving a mere recapitalization rather than a merger, adopts the average cost rule as laid down in the *Arrott* case.

9. This rule uses as a basis for the new stock only the total capital invested by the taxpayer.

10. This rule eliminates the possibility of a taxpayer's manipulating his stock sales in such a manner as may decrease his tax in a given year. In a year when his tax would otherwise be high, a taxpayer could sell new shares "identified" with high price old shares and thereby produce a smaller gain or, perhaps, a loss.

11. The court states: "It seems to us that the reasoning in Arrott v. Commissioner, . . . is erroneous and derives from a tangent of reasoning which the author of that opinion mistakes for the main stem. . . . No doubt the books of the surviving corporation would show the exchange as all stock issued for all stock surrendered. But the incident of the absorbing reorganization in its effect upon the corporation has nothing directly to do with the problem here. It is the exact gain or loss where it is ascertainable on an investment in stock that the law says must be the basis for his tax." 148 F. (2d) 452, 456 (C. C. A. 9th, 1945). This "incident of the absorbing reorganization in its effect upon the corporation" would appear directly to bear on the problem by showing the cost of the new stock to the taxpayer to be the "quotient of the cost of the old shares divided by the number of new shares received." Such quotient is then the basis for determining the exact gain or loss.

12. "The average cost rule finds such firm support both from the Tax Court and the various Circuits that it will take a Supreme Court decision or an Act of Congress to change it." Arrott v. Commissioner of Int. Rev., 136 F. (2d) 449, 451 (C. C. A. 3d, 1943).

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1. Judge Hand dissented only to the liability of the Hearst Publishing Company, on the grounds of its being an undesirable burden upon the freedom of the press.

2. The decision of the court as to the liability of defendant Hearst for damages is the only issue of the case dealt with in this comment.

The instant case presents the problem of two innocent parties, one of whom must suffer. Practically, it would seem that the publisher is better able to prevent the added harm that occurs to the author of a plagiarized work by having it publicized. True, the author has a remedy against the person who copied his work, but that remedy may, more often than not, be worthless, since the copier is likely to be outside the jurisdiction, impecunious, or judgment-proof. Furthermore, it is conceivable that some unscrupulous publisher might indirectly plagiarize an author's literary accomplishments by means of a "straw" copier, thus insulating his liability and depriving the author of any actual remedy. While it may be argued that to impose liability on the publisher is, in effect, extending the modern doctrine of absolute liability to cover infringement on literary property, that is not necessarily a bad thing.[3] The author of books or plays presents himself to the public through his work. They divulge his life, his beliefs, his personality, and his character. The very nature of man makes him extremely interested in having work of his own creation legally protected against infringement to the same extent that he is desirous of having his name, reputation, and social position protected against defamation. It is only natural from the standpoint of logic and experience that one who innocently infringes upon another person's literary property should occupy no better position in the eyes of the law than one who innocently publishes defamation. It cannot be said to place an unduly oppressive burden on the publishing house, for it is not imposing any stricter liability than is imposed upon them for publishing defamatory statements;[4] and history shows that this has not been unbearable, socially or economically. In turn, publishers have the ability to protect themselves by indemnification contracts and by insurance.

The question presented in the instant case was squarely met in the English case of *Mansell v. Valley Printing Co.*,[5] the court deciding that any person who, however innocently, published a pirated copy of an unpublished picture is liable for damages for infringing upon the owner's common law right of property in the picture.[6] The question is now presented in the United States as a matter of first impression.[7] Here is a publisher who is engaging in business voluntarily and for his own profit. If he sees fit to engage in this sort of business, there is no reason why he should not pay the cost of an injury which is caused by that sort of business. The rule of absolute liability is desirable in the cases of vicarious liability,[8] Workmen's Compensation,[9] and defamation.[10] It is submitted that the court acted wisely in holding that it is not unreasonable to force a publisher to ascertain whether a manuscript is a plagiarism, and that inability to do so is not a defense.

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3. For a general discussion of the developments of absolute liability see ELDREDGE, MODERN TORT PROBLEMS (1941) Chapter II.

4. Publishers are held absolutely liable for unprivileged defamatory statements appearing in their publications even though they did not intend the matter so published to be understood as defamatory, nor had reason to know that it might be considered defamatory. RESTATEMENT, TORTS (1938) § 580.

5. [1908] 2 Ch. 441.

6. The decision of the court was based on the reasoning that the author has an incorporeal property right in his work which entitled him to prevent its publication by others without his consent, and that the publisher gains no title, which justifies his dealing with the property, from one who had no title to it.

7. *Cf.* American Press Association v. Daily Story Publishing Co., 120 Fed. 766 (C. C. A. 7th, 1902); No-Leak-O Piston Ring Co. v. Norris, 277 Fed. 951 (C. C. A. 4th, 1921): Haas v. Leo Feist, Inc., 234 Fed. 105 (S. D. N. Y. 1916).

8. PROSSER, THE LAW OF TORTS (1941) 471 *et seq.*

9. *Id.* at 466 et seq.

10. *Id.* at 816-7.

**Trusts—Inter Vivos Trust—Beneficiaries Named in Unsigned Memorandum Found After Settlor's Death**—Testator, who had an insurance policy of which his estate was the beneficiary, executed a "request for change of beneficiary," naming Rice as the new beneficiary of the policy and reserving the right to make a further change. The testator by letter notified Rice of this action, stipulating that he wished the proceeds of the policy divided among five persons, namely Rice and four others whom he would name in his will. The beneficiary replied that he would carry out the testator's wishes, but the latter died without identifying the five persons in his will. Subsequently there was found among the testator's papers an unsigned handwritten memorandum headed "to share insurance," listing five persons including Rice. The executrix sued the insurance company to secure the fund from the policy, whereupon Rice intervened, contending that the proceeds should be awarded to him absolutely. The trial court gave judgment for the executrix, holding that a resulting trust arose in favor of the testator's estate. Rice appealed. *Held,* reversed and remanded. Such a memorandum by the testator when taken together with the letter created an express inter vivos trust for the benefit of the five persons named in the memorandum. *Jackman, Rice intervenor, v. Equitable Life Assurance Society of the United States,* 145 F. (2d) 945 (C. C. A. 3d, 1944).

In order to analyze the holding of the instant case it is necessary to take cognizance, as the court did, of the elementary requirements for the creation of an inter vivos trust. The *intent* to impress a trust upon the proceeds of the policy was clearly expressed in the testator's letter,[1] and was further evidenced by the memorandum. With regard to the *trust property,* the insurance contract is concededly a definite subject matter.[2] It was the manner in which the *beneficiaries* were designated that gave rise to the issue of the instant case. As Rice was named during the lifetime of the settlor to be trustee of all the proceeds of the policy and beneficiary of one-fifth of them, his right under an inter vivos trust should not be affected by any allocation of the remaining four-fifths. And equally, considering that Rice agreed to hold the remainder of the proceeds on trust, he cannot now be permitted to assert the rights of a sole beneficiary of the policy. But since the insured did not name the other beneficiaries before his death, it would appear that there could not be an inter vivos trust of which they were the object. Such reasoning was followed by the trial court. The case being decided upon Pennsylvania law,[3] it is important to note that the Pennsylvania Supreme Court has ruled that the object of a trust must be "ascertained."[4] The trial court, it would seem, properly

1. "The owner of the personal property may impress upon it a valid present trust, either by a declaration that he holds the property in trust or by a transfer of the legal title to a third party upon certain trusts." Dickerson's Appeal, 115 Pa. 198, 210 (1887). No fixed form of declaration is required to create a trust, but sufficient facts must be averred to show that the intention was plainly manifested. Smith's Estate, 144 Pa. 428, 22 Atl. 916 (1891).

2. Query, whether the settlor may create a trust in an insurance contract in which the rights are vested in another person. Some courts have said the beneficiary has a defeasible vested interest. Indiana Nat'l Life Ins. Co. v. McGinnis, 180 Ind. 9, 101 N. E. 289 (1913); Holder v. Prudential Ins. Co., 77 S. C. 299, 57 S. E. 853 (1907). Yet in a Note (1928) 42 HARV. L. REV. 251, the writer states: "The insured may, however, reserve the right to change [the beneficiary]; and in absence of facts establishing an equity in his favor, the named beneficiary has then a mere expectancy which will ripen into a vested interest only on the death of the insured." Mutual Benefit Life Ins. Co. v. Sweet, 222 Fed. 200 (C. C. A. 6th, 1915). HUEBNER, LIFE INSURANCE (1925) 413. Both were cited as authority for the statement.

3. Erie R. R. v. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 (1938).

4. Lawrence v. Godfrey, 296 Pa. 474, 146 Atl. 107 (1929), in which the court pointed out the three elements that must concur to create a trust.

held that the beneficiaries, with the exception of Rice, were not an ascertained object, and that consequently no inter vivos trust was created with respect to them, but rather that the insured's intent was to create a testamentary trust. Yet, since the unsigned memorandum could not qualify as a testamentary instrument, an express trust on that ground would fail.[5] It is submitted that the Circuit Court of Appeals in reversing the judgment fell into error by requiring that the beneficiaries of an inter vivos trust need only be "identifiable." [6] Nor should the legatees in the will share the four-fifths, for the insured's act of changing the beneficiary made the will inoperative with regard to the policy.[7] Instead, the remaining four-fifths of the proceeds should be held on a resulting trust for the estate.[8]

5. RESTATEMENT, TRUSTS (1935) § 56; 1 SCOTT, THE LAW OF TRUSTS (1939) § 56.4.

6. 145 F. (2d) 945, 949 (C. C. A. 3d, 1944). See also Frost v. Frost, 202 Mass. 100, 88 N. E. 446 (1909); Payton v. Almy, 17 R. I. 605 (1892).

7. In effect, the insurance policy was adeemed.

8. RESTATEMENT, TRUSTS (1935) § 411; 3 SCOTT, THE LAW OF TRUSTS (1939) § 411.2 and footnotes thereto.